

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
OCTOBER 1997 SESSION

FILED
December 23, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

LARRY LEONARD JOYNER, JR.,)
)
Appellant,)
)
VS.)
)
BILLY COMPTON, Warden,)
)
Appellee.)

C.C.A. NO. 02C01-9610-CC-00328
LAKE COUNTY
HON. JOE G. RILEY, JR.,
JUDGE
(Habeas corpus)

FOR THE APPELLANT:

FOR THE APPELLEE:

LARRY LEONARD JOYNER, JR. (pro se)
Register No. 135266
Rt. 1, Box 330
Tiptonville, TN 38079-9775

JOHN KNOX WALKUP
Attorney General & Reporter

DEBORAH A. TULLIS
Asst. Attorney General
450 James Robertson Pkwy.
Nashville, TN 37243-0493

C. PHILLIP BIVENS
District Attorney General
P.O. Drawer E
Dyersburg, TN 38024

OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The petitioner filed his petition for writ of habeas corpus on August 9, 1996, alleging that he is being illegally restrained by virtue of a twenty year sentence imposed in 1990 for aggravated rape. He contends that the underlying conviction is void because it is based on an invalid indictment. He alleges that the indictment is invalid because it does not include an allegation of the mens rea element of the offense. The petitioner relies on this Court's opinion in State v. Roger Dale Hill, Sr., No. 01C01-9508-CC-00267, Wayne County (Tenn. Crim. App. filed June 20, 1996, at Nashville). The court below summarily dismissed the petition, and this appeal as of right followed. We affirm.

We first note that our Supreme Court has overruled this Court's decision in Hill. See State v. Hill, ___ S.W.2d ___ (Tenn. 1997). Moreover, the indictment against the petitioner alleges that he committed aggravated rape by “unlawfully forcibly or coercively sexually penetrat[ing] [the victim] causing personal injury.” The use of the term “forcibly or coercively” is sufficient to allege the mens rea required for aggravated rape.¹ The petitioner's contention is therefore without merit.

The judgment below is affirmed.

JOHN H. PEAY, Judge

¹The mens rea requirement for aggravated rape is intentional, knowing or reckless. See State v. Hill, ___ S.W.2d ___, ___ (Tenn. 1997)

CONCUR:

PAUL G. SUMMERS, Judge

DAVID G. HAYES, Judge